IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5189 of 1991

with
SPECIAL CIVIL APPLICATION NO.5192 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJ. STATE FINANCIAL CORPN.

Versus

BANDIABELI CERAMICS WORKS

Appearance:
MR H S. MUNSHAW for Petitioner No. 1
RULE SERVED for Respondent No. 1-5

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 05/04/2002

COMMON ORAL JUDGEMENT

1. In these two petitions, the Gujarat State Financial Corporation has challenged the proceedings filed in the Court of Civil Judge, Junior Division, Chotila, being Civil Misc. Application no.3/1990

(Special Civil Application no.5189/1991) and Civil Misc. Application no.1/1990 (Special Civil Application no.5192/1991) on the ground that the Civil Court has no jurisdiction to entertain these proceedings in view of the provisions of Section 3(4) of the Gujarat Public Moneys (Recovery of Dues) Act,1979 (for short the "Act")

2. In Special C.A. no.5189/1991, according to the petitioner-Corporation, it had sanctioned a term-loan of Rs.2,67,000/-on 14th August, 1974 to the respondent no.1-firm for setting up a project for ceramic industry. The loan was sanctioned against equitable mortgage of land, building and hypothecation of machinery. It was to be repaid within eight years by thirteen half yearly installments and was to carry interest at the rate of 12% per annum. The respondent-firm and its partners failed to comply with the terms and conditions of the loan and committed defaults in payment of installments. A recovery certificate was, therefore, issued by the Corporation and forwarded to the Collector for recovery. The Collector issued notice on the debtors for the repayment of the amount and as it was not repaid, attachment notice dated 8th May, 1990 was issued. Thereupon, the respondent-debtors challenged the action by filing Misc. Civil Application no.3/1990 in the Court of Civil Judge, Junior Division, Chotila, for quashing and setting aside the recovery certificate and notice issued by the Collector.

3. In Special Civil Application no.5192/1991, the petitioner-Corporation raising identical plea against the jurisdiction of the Civil Court has contended that the respondent no.1-firm was sanctioned a term-loan of Rs.2,59,000/- on 14th August, 1974 for setting up a project for ceramic industry and as per the terms and conditions of the loan, it was to be repaid within eight years in twenty-five equal quarterly installments. Interest was payable at the rate of 12% per annum. Even in this case, after failure on the part of the debtors, a recovery certificate was issued by the Corporation and forwarded to the Collector who issued attachment notice on 11th January, 1990, after giving a reasonable opportunity to the debtors for repaying the loan amount to the Corporation. There also the respondent-firm and its partners challenged the action of the Corporation and the Collector by filing Misc. Civil Application no.1/1990 in the Court of Civil Judge, Junior Division, Chotila praying for setting aside the recovery certificate and the attachment notice.

4. It was contended by the learned Counsel for the

petitioner-Corporation that Civil Court had no jurisdiction to entertain the proceedings by which the action sought to be taken for the recovery of the dues of the Corporation of the nature falling in Section 3(1)(a) of the said Act is challenged. Section 3(1)(a) of the said Act provides that where any person is a party to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of or relating to hire-purchase of, goods sold to him by the State Government,or the Corporation or, as the case may be, the Government Company, by way of financial assistance and such person makes any default in payment of the loan or advance or any instalment thereof, the Managing Director of the Corporation may issue a recovery certificate mentioning the sum due from such person and requesting that such sum may be recovered as if it were an arrear of land revenue.

Subsection (2) of Section 3 enjoins a duty on the Collector to recover amount stated in the certificate as arrears of land revenue.

Subsection (4) of Section 3 provides that no suit for the recovery of any such due shall lie in Civil Court against any person referred to in subsection (1), and no injunction shall be granted by a Civil Court in respect of any action taken or intended to be taken in pursuance of the right conferred by this Section.

5. In the present case, the loans which were advanced by the Corporation were admittedly not repaid by the firms, and therefore, they committed default in payment and did not comply with the terms of the loan agreement as contemplated by Section 3(1) of the Act. Recovery certificates were, therefore, issued in these cases and forwarded to the Collector for making recovery under subsection (2) of Section 3 of the Act. In both these matters, therefore, recovery of the dues was commenced under Section 3(1)(a) read with Section 3(2), and therefore, the Civil Court had no jurisdiction to entertain the Misc. Civil Application in which the recovery certificates and the attachment notices issued by the Collector were challenged. As held by a Division Bench of this Court in M/S.RASIKLAL FULCHAND VS. CENTRAL BANK OF INDIA AND ORS. reported in 1987(1) Vol.XXVII (1) G.L.R 291, suits which are fully covered by the provisions of subsection (1) of Section 3 of the Act will only be excluded from the purview of the Civil Court(See paragraph 7 of the judgment).

6. We, therefore, hold that the Court of Civil

Judge, Junior Division, Chotila, has no jurisdiction to entertain Misc. Applications nos.3/1990 and 1/1990 or to make any interim orders in those proceedings. Both these proceedings pending in the Court of Civil Judge, Junior Division, Chotila, being without jurisdiction are quashed alongwith any orders that may have been passed in them by a writ of prohibition. Both these petitions are accordingly allowed. Rule is made absolute in each of them with no order as to costs.

(R.K. Abichandani,J.)

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